

Federal Communications Commission

DA 00-2828

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 97-252
Table of Allotments,) RM-9602
FM Broadcast Stations)
(Columbia City, Florida))

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: December 6, 2000

Released: December 15, 2000

By the Chief, Allocations Branch:

1. The Commission has before it an Application for Review filed by Max Media directed to the Report and Order¹ in this proceeding. Upon review of the record in this case and relevant precedents that define what constitutes a "community" entitled to a broadcast allotment, we have determined that Columbia City is a community entitled to an FM allotment. We will grant the relief requested to the extent of allotting Channel 234A to Columbia City, Florida.

2. Background. At the request of Max Media, the Notice of Proposed Rule Making² ("Notice") proposed the allotment of Channel 243A to Columbia City, Florida, as its first local aural transmission service. The Notice observed that even though Columbia City can be located on a map, it is not incorporated, nor is it listed in the U.S. Census, and it does not have its own post office. The Notice determined that the information Max Media provided in its petition for rule making was insufficient to conclude that Columbia City is a community for allotment purposes. Therefore, the Notice requested that Myers provide specific information as to the social, economic, and governmental indicia of Columbia City to demonstrate that it is a community for allotment purposes. Further, although Max Media had indicated that there were some businesses, churches and a school in Columbia City, the Notice observed that Max Media had not identified those entities with addresses or shown that they are intended to serve residents of Columbia City as opposed to other areas. Therefore, the Notice requested Max Media to demonstrate that any organizations, civic groups, churches, schools, or other entities identified by Max Media have a nexus with Columbia City.

¹ 14 FCC Rcd 21165 (Allocations Br. 1998)

² 13 FCC Rcd 245 (Allocations Br. 1998).

3. In response to the Notice, Max Media filed additional information to demonstrate that Columbia City is a community. It stated that Columbia City is a rapidly growing community located at the intersections of State Route 47 and County Road 240 in southwestern Columbia County and that Columbia City is identified by road signs on Route 47. Max Media provided photographs of 28 institutions and businesses that are located in Columbia City, including the Columbia City Elementary School, the Columbia City Volunteer Fire Department, various retail establishments and restaurants and nine churches. (See Exhibit 1 of Max Media's comments.) Nine individuals associated with these institutions and businesses have provided statements in which they describe their organizations' association with Columbia City and their relationship with residents of the community. (See Exhibits 2—9 and 11 of Max Media's comments.) Two of the churches have signs that identify themselves as being located in Columbia City. Max Media included declarations from 83 persons who state that they are residents of Columbia City and describe why they feel a sense of community in Columbia City and identify the specific institutions and/or businesses which they regularly use in the community. (See Exhibit 10 of Max Media's comments.)

4. In its comments, Max Media explained that more than 350 building permits for new homes were issued in the Columbia City Elementary School attendance zone each year during the period of 1993 to 1997 (See Exhibit 15 of Max Media's comments) and that the U. S. Postal Service established an additional new zip code for Lake City in 1994 (32024) to accommodate the rising demand for postal services resulting from the growth in the Columbia City area (See Exhibit 16 of Max Media's comments). Exhibit 11 of Max Media's comments states that population information furnished to the pastor of Columbia Baptist Church by the Church Extension Department of the Florida Baptist Convention, that was derived from data provided by Scan/US, Inc., indicates that the population of the Columbia City area was 1,911 in 1990 and estimated to be 2,385 by 1998. The population figures were based upon a circular area with a three-mile radius and centered on the new location for Columbia Baptist Church on County Road 47, adjacent to the Columbia City Elementary School. Max Media also provided data from the Supervisor of Elections for Columbia County showing an increase in the number of registered voters in the Columbia City area during recent years. (See Exhibit 12 of Max Media's comments.)

5. The Report and Order found that Columbia City did not qualify as a community for allotment purposes. It noted that while Max Media claimed that Columbia City has an elementary school, fire department, churches, and local businesses, Max Media did not identify those entities with Columbia City addresses or show that those entities intended to serve Columbia City as opposed to an expanded rural area. Specifically, the Report and Order observed that Columbia City businesses providing statements used by Max Media had Lake City mailing addresses, as did the churches, according to their letterheads. In addition, the Report and Order stated that Max Media provided a number of form letters signed by area residents attesting to the community status of Columbia City, but that the majority of those letters listed a post office box or a Lake City mailing address rather than a Columbia City address. Further, the Report and Order explained that the elementary school is administered by Columbia County and the fire department is housed in a county facility. It also observed that no information had been provided concerning the existence of any type of local, as opposed to county, government for Columbia City or that rural residents view Columbia City as a center for shopping or medical services, nor were excerpts from a telephone book presented to show

that Columbia City had a separate telephone exchange. Finally, the Report and Order stated that Columbia City is located near other larger cities and could not be considered an isolated community concerned with survival issues, such as those with which Cal-Nev-Ari, Nevada, was concerned. It noted that the Commission had recently allotted a first local service to the latter community. See Cal-Nev-Ari, Boulder City, and Las Vegas, Nevada, 14 FCC Rcd 17153 (Allocations Br. 1999).

6. Application for Review. Max Media filed an Application for Review of the Report and Order in which it argues that Columbia City qualifies as a community to which an FM channel can be allotted. In response to the Report and Order's claim that Max Media did not identify institutions, businesses, and residents of Columbia City with Columbia City addresses, Max Media responds that there is no post office which bears the name "Columbia City" and that the institutions and businesses in question identified their addresses as being in the 32024 zip code area, which is known as the "Columbia City community delivery area," quoting a statement by the Postmaster for Lake City, Florida, in Exhibit 16 of its comments. Further, Max Media asserts that community leaders explicitly identified themselves and their institutions or businesses with Columbia City in their statements contained in its Exhibits 2--9 and 11 and that these statements should not have been ignored or disregarded. Max Media also argues that the 83 additional declarations by residents of Columbia city in which they express their connections to Columbia City demonstrate the existence of an "identifiable population grouping" who "function as and conceive of themselves as residents of a community around which their interests coalesce," citing Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991), and cases cited therein.

7. Discussion. After having considered the facts and arguments in this case, we have determined that Columbia City constitutes a community for allotment purposes and we shall allocate Channel 243A to that community as proposed in the Notice. In reviewing the facts of this case, we have been guided primarily by the Commission's prior decision in Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcasting Assignments (Semora, North Carolina) (Semora), 5 FCC Rcd 934 (1990). In Semora, the Commission found that Semora, North Carolina, was a community for allotment purposes even though Semora was not listed in the census reports, had an estimated population of only 150, had no local government, and provided no municipal services except for its volunteer fire department. That case noted that even though residents relied on the county to provide police and schools, there could be any number of reasons as to why such services are provided on a county-wide basis as opposed to a local basis. Both Semora and Columbia City have their own local volunteer fire departments and churches and evidence commercial activity. Neither community is a small municipality on the fringe of a larger urban area. Although Semora has a civic organization (the Semora Ruritan Club) and two churches, both of which have Semora in their names, the record in the case now before us indicates that the residents of Columbia City have nine churches available for their use, including two churches that have signs identifying the churches as being located in Columbia City, as well as the Columbia City Elementary School. With respect to the elementary school, Exhibit 2 of Max Media's comments consists of a letter from the Assistant Principal of the school explaining that even though the school serves a large attendance zone, it is actually considered to be the neighborhood school of the community of Columbia City and that school activities and fund-raising dinners are well attended by parents and other members of the Columbia City community.

8. Max Media estimates that the population in the Columbia City area to be 1,911 in 1990, and estimates the population to be 2,385 in 1998. Our own engineering analysis based upon data from the 1990 U.S. Census confirms these estimates. Using the city reference coordinates of Columbia City as the center of a circle with a 3-mile radius, the population of the circular area is about 2,500. In addition, our analysis shows that the population of a similar circular area with a 1-mile radius is 682. Max Media and the persons providing statements concerning their involvement with Columbia City to perceive Columbia City to be a rural community stretching over a fairly large area. In this regard, precisely ascertainable borders are not a prerequisite for a community to be licensable. See, e.g., Beacon Broadcasting, 2 FCC Rcd 3469, 3470-71 (1987), recon. denied, 2 FCC Rcd 7562 (1987).

9. Semora's community status was established in part by a petition signed by a number of individuals attesting to their belief that Semora is a community and by letters supporting this contention. Columbia City's community status has been established by a number of statements from local institutions and businesses and by 83 individuals attesting to their belief that Columbia City is a community. Although the letterheads of five of the nine statements from community leaders (Exhibits 2-5 and 11) list Lake City, Florida in their addresses, they also list the specific zip code for the Columbia City delivery area (32024) and each statement describes the organization's relationship with the residents of Columbia City. Moreover, the 83 declarations from area residents attesting to the community status of Columbia City cannot be ignored on the basis that their addresses are within the 32024 zip code for Lake City, Florida. It would appear that Columbia City's status as a community is supported by evidence as convincing as that presented in Semora. In any event, residents of both communities provided "evidence of the subjective belief of area residents"³ that Semora and Columbia City are communities. Thus, both communities provided subjective evidence as well as "objective indications of the existence of a common perception that a locality's populace constitutes a distinct 'geographical population grouping'".⁴ We note that each of the factors indicating the existence of a cognizable "community" discussed above, when considered in isolation, would not necessarily make an area a community. Rather, when viewed together, the factors are strong evidence of the existence of a community.⁵ Although Semora and this case present the bare essentials required to establish the existence of a community, we continue to believe that Semora was decided correctly and that this case falls within the parameters of Semora. In addition, our finding that Columbia City, Florida constitutes a community for allotment purposes is in accordance with other leading Commission-level decisions on the subject. See Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations, (Kenansville, Florida),⁶ Beacon Broadcasting,⁷ and Seven Locks Broadcasting Co.⁸

³ 5 FCC Rcd at 935.

⁴ 5 FCC Rcd at 934, citing Beacon Broadcasting, 2 FCC Rcd 7562 (1987).

⁵ See Teche Broadcasting Corp., 52 FCC 2d 970, 973 (Rev. Bd. 1975) (test for community status encompasses consideration of the totality of the circumstances).

⁶ 10 FCC Rcd 9831 (1995).

⁷ 2 FCC Rcd 3469 (1987); recon. denied, 2 FCC Rcd 7562 (1987).

⁸ 37 FCC 82 (1964).

10. As stated in the Notice, Channel 243A can be allotted to Columbia City, Florida, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the city reference coordinates of 30-04-12 and 82-41-42. In view of our petition allotting Channel 234A to Columbia City, Max Media is no longer a party aggrieved within the ambit of Section 1.115 of the rule. As such, we will dismiss the Application for Review.

11. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 29, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules IS AMENDED with respect to the community listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Columbia City, Florida	243A

12. The window period for filing applications for Channel 243A at Columbia City, Florida, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

13. IT IS FURTHER ORDERED, That the Application for Review filed by Max Media IS DISMISSED as moot.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau